

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

NOTICE OF MOTION NO.1945 OF 2005
IN
APPEAL (LODGING) NO.608 OF 2005
IN
NOTICE OF MOTION NO.3191 OF 2005
IN
SUIT NO.3123 OF 2004

Nivedita Kasargod

Appellant

vs.

Ajit Prabhakar Nerurkar & anr.

Respondent

Mr.Paritosh Jaiswal i/b.M/s.Kanga & Co. for the
appellant in support.

Mr.Vikas Warerkar i/b.M/s.Warerkar & Warerkar for the
respondents to show cause.

**CORAM : R. M. LODHA &
J.P. DEVADHAR, JJ.**

DATED : 26th July 2005

P.C.

The present respondent nos. 1 and 2 are the original plaintiffs. The appellant is the original defendant. The plaintiffs have filed the suit for specific performance of the agreement dated 6th September 2003 and other ancillary reliefs before this Court in respect of the subject property being Flat No.B-11, 1st floor, 494 Sadhana, 16th Road, Khar (West), Mumbai 400 052. The plaintiffs took out notice of motion for interim reliefs. On 29th October 2004 the

learned motion Judge passed an ad-interim order restraining the defendant (present appellant) from dealing with, disposing of, encumbering or transferring or creating third party interest in respect of the suit property. Aggrieved thereby the defendant has preferred the appeal. The appeal suffers from delay of 189 days and hence by this notice of motion, the appellant has prayed for condonation of delay.

2. The notice of motion for condonation of delay is opposed by the respondents.

3. In the affidavit in support of the notice of motion, it is stated that the order dated 29th October 2004 was passed ex parte without notice and service of the papers and proceedings. The appellant claims to have come to know of the impugned order when she received copy thereof sent by the advocates for the original plaintiffs. She has set up the case that she being resident of Dubai and having no direct contacts with the lawyers, she could not get a lawyer immediately. On 8th December 2004 she contacted Advocate Mr.Kamat who happens to be the advocate of the society. He recommended the name of Mr.Bharat Zaveri, advocate. She could not contact Mr.Bharat Zaveri until mid-January 2005 and then she re-searched the law firms in Bombay and approached M/s.Little & Co. According to her it

took a long time for the M/s.Little & Co. to respond as the person she was dealing with in Little & Co. was on move. In the month of mid-February 2005 she requested the Secretary of the said society to recommend the law firm and M/s.Kanga & Co. was recommended. She engaged M/s.Kanga & Co. They took up the matter with the advocates for the original plaintiffs for getting the papers of the proceedings. There was some confusion as to who was representing the appellant, Little & Co. or Kanga & Co. It was only on 12th May 2005 that her advocate M/s.Kanga & Co. received the papers and then on 8th July 2005, the appeal was preferred.

4. The facts set out in the affidavit in support of the notice of motion do not make out the sufficient cause for the delay of more than six months. The explanation for delay from 8th December 2004 to mid-January 2005 is not acceptable. Similarly the delay from mid-January 2005 to mid-February 2005 is also not sufficiently explained. Eventhough the appellant's advocate M/s.Kanga & Co. filed vakalatnama in the month of March 2005, the appeal was preferred only in the month of July 2005. That shows the laxity on the part of the appellant. Even if we assume that the papers of the proceedings were received by the advocate for the appellant on 12th May 2005 from the advocates of the plaintiff, the delay thereafter until 8th July 2005

remains unexplained.

5. Notice of motion for condonation of delay is accordingly dismissed.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)